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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

JARED DEAVER, as an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

BLUE DIAMOND GROWERS, a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Lead Case No. 34-2022-00316490-CU-OE-
GDS

[Consolidated with Case No. 34-2021-
00304425-CU-OE-GDS and Case No. 34-2022-
00319378]

*Assigned for All Purposes to Honorable
Lauri A. Damrell in Dept 22*

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: June 27, 2025

Time: 9:00 a.m.

Department: 22

AND RELATED CONSOLIDATED CASES.

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1 **TO THE COURT, DEFENDANT, AND ITS COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on June 27, 2025, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard in Department 22, of the above-entitled court located at 720 9th Street, Sacramento,
4 California 95814, Plaintiffs Jared Deaver, Brad Smith, and Daniel Ramirez (collectively “Plaintiffs”),
5 will and hereby do seek an Order:

- 6 1. Granting final approval to the Settlement Agreement and Release (“Settlement Agreement” or
7 “Agreement”) in this action;
- 8 2. Certifying the following Class for settlement purposes only “all current and former non-
9 exempt California employees employed directly by defendant Blue Diamond Growers (“Blue
10 Diamond”) who worked at any time during the Class Period of July 14, 2017 through August
11 23, 2024”;
- 12 3. Approving distribution of the settlement funds to Class Members pursuant to the terms of the
13 Settlement Agreement;
- 14 4. Approving Plaintiffs’ request for a service award of \$10,000.00 to each of the Class
15 Representatives pursuant to the terms of the Settlement Agreement;
- 16 5. Approving Class Counsel’s request for an award of attorneys’ fees of 35% of the Gross
17 Settlement Amount, or \$1,782,738.13, and reimbursement of litigation costs of \$33,805.62
18 pursuant to the terms of the Agreement;
- 19 6. Approving payment of the settlement administration costs to Phoenix Settlement
20 Administrators in the amount of \$22,000.00, pursuant to the terms of the Agreement;
- 21 7. approving PAGA payment \$250,000.00 (75% to be paid to the LWDA and 25% to the
22 aggrieved employees), pursuant to the terms of the Agreement; and
- 23 8. entering final judgment as to the Class Members, the Aggrieved Employees, and the State of
24 California (including the Labor and Workforce Development Agency) in this action.

25 This motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for
26 Court approval of the settlement of a purported class action and allows the Court to grant final
27 certification of a class for settlement purposes. The overwhelmingly positive Class response, as shown
28

1 by the lack of objections to the settlement and the fact that only eleven Class Members opted out,
2 supports that the settlement is fair, reasonable, and adequate, including in light of PAGA's purposes to
3 remediate present labor law violations, deter future ones, and to maximize enforcement of state labor
4 laws—and should be granted final approval.

5 This motion will be based on the attached Memorandum of Points and Authorities, the
6 supporting Declarations of Chad Saunders, David Bibiyan, Larry W. Lee, William L. Marder, Edward
7 W. Choi, Jared Deaver, Daniel Ramirez, and Taylor Mitzner on behalf of Phoenix Settlement
8 Administrators, and upon the oral arguments of counsel (should there be any) and on the complete
9 records and file herein.

10 Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this
11 matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the
12 department may be downloaded off the court's website. If the party does not have online access, they
13 may call the dedicated phone number for the department as referenced in the local telephone directory
14 between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the
15 tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the court day before the
16 hearing, no hearing will be held.

17
18 DATED: June 4, 2025

LAW OFFICES OF CHOI & ASSOCIATES

19
20
21 By: 

22 Edward W. Choi
23 Attorneys for Plaintiffs
24
25
26
27
28

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to Local Rule 2.99.05, Plaintiffs Jared Deaver, Brad Smith, and Daniel Ramirez
4 (“Plaintiffs” or “Class Representatives”) submit this Memorandum in support of the Motion for Final
5 Approval of the Settlement Agreement and Release (“Settlement Agreement”, “Settlement”, or
6 “Agreement”).

7 Per the Court’s February 13, 2025 Order Granting Plaintiffs’ Motion for Preliminary Approval
8 (“Preliminary Approval Order”), the Settlement Administrator, Phoenix Settlement Administrators
9 (“Phoenix” and/or “Settlement Administrator”), distributed the Class Notice to all 2,392 Class Members.
10 (See Declaration of Taylor Mitzner (“Admin Decl.”) at ¶5.) As of the date of this declaration, five (5)
11 Notices remain undeliverable, because an updated address could not be obtained via skip trace. (*Id.* at
12 ¶7). There have been *zero* (0) objections filed to the Settlement and *only six* (6) requests for exclusion
13 from the Settlement. (*Id.* at ¶¶8-9, Ex. B). Thus, there is a 99.75% participation rate with not a single
14 objection. (*Id.* at ¶10). This favorable response by the Class supports the Court’s Preliminary Approval
15 Order finding that the Settlement was fair, adequate and reasonable, and further supports the granting of
16 this instant Motion.

17
18 In sum, as a result of the notice process, and in light of the complete lack of any objections and
19 request for exclusions, the Court may confirm its preliminary approval as this process supports the
20 Court’s initial finding that the Settlement is fair, adequate and reasonable.

21 In addition to the results of the notice process, for the same reasons as set forth earlier in
22 Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, the following represents the key
23 financial terms of the Settlement:

- 24 ▪ Gross Settlement Amount of \$5,093,537.50 for a class size of 2,392 and Class Members
25 will be entitled to recover, on average, \$1,246.85, with the highest award being
26 approximately \$2,641.40 each after deductions for fees, costs, representative award and
27 PAGA payment (Admin Decl. ¶ 13);

- Class Counsel’s attorneys’ fees of \$1,782,738.13 and reimbursement of litigation costs of \$33,805.62¹;
- Class Representatives Enhancement of \$10,000.00 each;
- Settlement Administration costs of \$22,000.00;
- PAGA payment \$250,000.00 (75% to be paid to the LWDA and 25% to the aggrieved employees), pursuant to the terms of the Agreement; and

Based on foregoing, the Court should grant Final Approval consistent with the Preliminary Approval Order.

II. THE SETTLEMENT

A. Class Members Were Provided Proper Notice.

The notice procedures required by the Preliminary Approval Order have been followed and satisfy all due process rights of Class Members.

The Preliminary Approval Order contemplated that the Notice of Class Action Settlement (“Notice”), as approved in the Preliminary Approval Order, be sent to all Class Members by first class mail, as specified in the Settlement Agreement. The Preliminary Approval Order contemplated, further, that Phoenix would serve as the Settlement Administrator.

As clearly stated in the Declaration of the Settlement Administrator, notice was provided to Class Members as required by the Preliminary Approval Order. The Settlement Administrator received a Class Member mailing list from Defendant that included 2,392 Class Members, and, on March 5, 2025, each of the persons identified on the mailing list was sent the Notice via first class mail. (Admin Decl. at ¶¶3-5.) Sixty-one (61) Notices were returned to PSA. (*Id.* ¶6). Phoenix attempted to locate a current mailing address using TransUnion TLOxp, one of the most comprehensive address databases available for skip tracing and fifty-six (56) updated addresses were obtained and the Notice was promptly re-mailed to those Class Members via first class mail. (*Id.*) Five (5) Notices remain undeliverable, because an updated address could not be obtained via skip trace. (*Id.* ¶7.)

¹ The maximum costs that was allocated per the Settlement Agreement was \$80,000.

1 The provision of the notice to Class Members and administration of the settlement as described
2 above meets the requirements for the “best notice practicable” in this case as necessary to protect the
3 due process rights of Class Members. *See, e.g., Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12
4 (1985) (provision of “best notice practicable” with description of the litigation and explanation of opt-
5 out rights satisfies due process); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974) (individual
6 notice must be sent to class members who can be identified through reasonable means); *Mullane v.*
7 *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (best practicable notice is that which is
8 “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the
9 action and afford them an opportunity to present their objections”).

10 Here, the Class Members were provided with a mailing regarding the settlement that explained
11 the settlement, right and process to opt-out or object, and allowed Class Members to seek information,
12 ask questions, and seek additional forms. As such, proper notice has been given to the Class Members.

13 The Court, therefore, may proceed to determine the fairness and adequacy of the Settlement, and
14 order its approval, secure in the knowledge that all absent Class Members have been given the
15 opportunity to participate fully in the exclusion, objection, and the approval process.

16
17 **III. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE AND REASONABLE,**
18 **AND THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL**

19 **A. The Terms of the Settlement, the Negotiation of the Settlement and the Reception of**
20 **the Settlement By Class Members All Strongly Support the Conclusion That the**
21 **Settlement is Fair, Adequate and Reasonable**

22 Without reiterating the Parties’ showing that the Settlement Agreement and the negotiation
23 process that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary
24 Approval of Class Action Settlement, the Parties highlight the following facts. The Agreement was the
25 product of negotiation between highly able and experienced attorneys on both sides, possessed of the
26 relevant data and extensive legal research which they had carefully analyzed. (Declaration of Edward
27 Choi (“Choi Decl.”) at ¶¶ 2-3). In addition, the parties engaged in mediation with well-respected
28 mediator Hon. Daniel J. Buckley (Ret.), on May 14, 2024, which ultimately led to this settlement. (*Id.* at
¶3).

1 The results after mailing of the Class Notice support confirmation of the Court’s preliminary
2 approval of the settlement with final approval of the settlement, as evidenced by the fact that *there is not*
3 *a single Class member who has objected to the current settlement and only 6 requested exclusion.*
4 (Admin Decl. at ¶¶8-9). As such, there is a 99.75% participation rate in the settlement without a single
5 objection.

6 The Court may appropriately infer that the class action settlement is fair, adequate and
7 reasonable when, among other reasons, few class members object to it. *See Class Plaintiffs v. City of*
8 *Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992) The Court should further construe the lack of any
9 objection to this current settlement, as well as there were no opt-outs, as an indication that Class
10 Members themselves view the settlement as fair, adequate and reasonable.

11 **B. Under Well-Established Legal Principles, the Court Should Grant Final Approval**
12 **to the Settlement**

13 **1. Standard of Review**

14 On a motion for final approval of a class action settlement under Civil Code § 1781(f) and
15 Federal Rules of Civil Procedure (“FRCP”) Rule 23(e), a court’s inquiry is whether the settlement is
16 “fair, adequate and reasonable.”² *Officers for Justice v. Civil Serv. Comm’n*, 668 F.2d 615, 625 (9th Cir.
17 1982), *cert. denied subnom.*, *Byrd v. Civil Serv. Comm’n*, 459 U.S. 1217 (1983). A settlement is fair,
18 adequate and reasonable, and therefore merits final approval, when “the interests of the class are better
19 served by the settlement than by further litigation.” *See* Manual for Complex Litigation Fourth (Fed.
20 Judicial Center 2004) (“Manual”), § 21.6 at 309.

21 The law favors settlement, particularly in class actions and other complex cases, where
22 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See* 4
23 Newberg on Class Actions 4th § 11.41 (2008); *Chemical Bank v. City of Seattle*, 955 F.2d 1268, 1276
24 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

25
26
27
28 ² Both Civil Code § 1781(f) and FRCP Rule 23 have been expressly authorized by the California
Supreme Court for use in all California class action litigation. *See Vasquez v. Superior Court* (1971) 4
Cal. 3rd 800, 820-821.

1 Although the Court possesses “broad discretion” in determining that a proposed class action
2 settlement is fair, the Court’s role must be limited to the extent necessary to reach a reasoned judgment
3 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
4 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned. *See*
5 *Officers for Justice, supra* 688 F.2d at 625. Accordingly, the Court should give due regard to what is
6 otherwise a “private consensual agreement” between the parties. *Id.*; *see also Church v. Consolidated*
7 *Freightways, Inc.*, 1993 WL 149840 (N.D. Cal. 1993); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*,
8 720 F.Supp. 1379 (D. Ariz. 1989), *aff’d sub nom.*, *City of Seattle*, 955 F.2d 1268; Manual § 21.6 at 309
9 (“The judicial role in reviewing a proposed settlement is critical, but limited to approving the proposed
10 settlement, disapproving it, or imposing conditions on it. The judge cannot rewrite the agreement.”)

11 A court’s approval of a class action settlement will only be reversed for a clear abuse of
12 discretion. *See Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801; *see also Officers for*
13 *Justice*, 688 F.2d at 626 (“reverse only upon a strong showing that the district court’s decision was a
14 clear abuse of discretion”); *Chemical Bank*, 955 F.2d at 1276; *Ackerman v. Kassar*, 1993 WL 326453
15 (9th Cir. 1993); *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998).

16 As the court in *7-Eleven Owners for Fair Franchising v. Southland Corp* cautioned: “[i]t cannot
17 be overemphasized that neither the trial court in approving the settlement nor this Court in reviewing
18 that approval have the right or duty to reach any ultimate conclusions on the issues of fact and law
19 which underlie the merits of the dispute. It is well settled that in the judicial consideration of proposed
20 settlements, ‘the [trial] judge does not try out or attempt to decide the merits of the controversy,’
21 [citation] and the appellate court ‘need not and should not reach any dispositive conclusions on the
22 admittedly unsettled legal issue.’” *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
23 Cal. App. 4th 1135, 1146.

24 **2. The Settlement Is Presumed To Be Fair**

25 The Court should begin its analysis with the presumption that the settlement is fair and should be
26 approved:
27

28 [A] presumption of fairness exists where : (1) the settlement is reached through arm’s-
length bargaining; (2) investigation and discovery are sufficient to allow counsel and the

1 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
2 percentage of objectors is small.

3 *Dunk v. Ford Motor Co* (1996) 48 Cal. App. 4th 1794, 1802; *7-Eleven Owners for Fair Franchising*, 85
4 Cal. App. 4th at 1146; *accord, Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980); *In*
5 *re Wash. Pub Power Supply*, 720 F Supp at 1387.

6 The settlement in the case at bar warrants approval and carries a presumption of fairness. As
7 previously noted in the application for Preliminary Approval, this current settlement was negotiated at
8 arms' length, and with the assistance an experienced mediator. (Choi Decl. at ¶ 3). Class Counsel
9 engaged in sufficient discovery and in significant investigation before settling. (*Id.* at ¶2). Furthermore,
10 Class Counsel is highly experienced in this type of litigation. As shown in the supporting declarations,
11 Class Counsel has significant experience in class actions and employment wage and hour matters. (Choi
12 Decl. at ¶ 7; Declaration of Larry W. Lee ("Lee Decl.") ¶¶6-7, Declaration of Chad Saunders ("Saunders
13 Decl") ¶¶12-26; and Declaration of David Bibyian ("Bibyian Decl.") ¶¶3-13).

14 **3. Two-Way Costs and Other Risks Inherent In Continued Litigation Favor**
15 **Final Approval**

16 To assess the fairness, adequacy and reasonableness of a class action settlement, the Court also
17 should weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent in
18 continued litigation. *See also In re General Motors Corp.*, 55 F.3d 768, 806 (3d Cir. 1995) ("present
19 value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk
20 of not prevailing, should be compared with the amount of the proposed settlement") (internal citations
21 omitted); *Girsh v. Jepson*, 521 F.2d 1 53, 157 (3d Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610,
22 616-17 (N.D. Cal. 1979).

23 If Plaintiffs pursued this case without settlement and failed to prevail, Plaintiffs could have been
24 responsible for Defendant's costs. As such, should individual, current or former employees of
25 Defendant want to bring individual claims on the same causes of action, they would each face the
26 uncertainty of prevailing and the possibility of paying costs to Defendant. Accordingly, such claims
27 likely would not be brought by many of these current and former employees—thus, this lawsuit achieves
28 a true benefit for the class that they might not otherwise get or seek as individuals. Here, given that a

1 fair and reasonable settlement has been reached, neither Plaintiffs, nor any of the class members will be
2 required to pay for Defendant's litigation costs.

3 The risks of this case were weighed by Class Counsel and, should be considered a significant
4 issue by the Court in its determination of final approval. Class Counsel obtained a very substantial
5 settlement for the Class that resulted in a fair recovery which at the same time provides for finality and
6 no risk of costs by the Class Members or the Class Representative.

7 The Settlement Agreement also affords the Class prompt, fair relief, while avoiding significant
8 legal and factual battles that otherwise may have prevented the Class from obtaining any recovery at all.
9 While Class Counsel believe the Class Members' claims are meritorious and can be successfully
10 litigated, they are experienced and fully understand the inherent risks and uncertainty involved with such
11 matters as the resolution of class certification, the outcome of a potential trial, and the outcome of any
12 appeals that would inevitably follow should the Class prevail at trial.

13 Class Counsel has also assessed the same risks in connection with the current settlement.
14 Because the settlement provides immediate and substantial relief, without the attendant risks and delay
15 of continued litigation – not to mention the threat of litigation fees and costs – Class Counsel believe
16 that the settlement warrants the Court's final approval.

17
18 **4. The Complexity, Expense and Likely Duration of Continued Litigation**
19 **Against Defendant Favor Final Approval**

20 Another factor considered by courts in approving a settlement is the complexity, expense, and
21 likely duration of the litigation. *See Officers for Justice*, 688 F.2d at 625; *Girsh*, 521 F.2d at 157. In
22 applying this factor, the Court must weigh the benefits of the settlement against the expense and delay
23 involved in achieving an equivalent or more favorable result at trial. *See Young v. Katz*, 447 F.2d 431,
24 433-434 (5th Cir. 1971).

25 As noted above, continued litigation could have led to appeals on a number of issues. On the
26 other hand, the settlement that was reached provides to all Class Members – regardless of their means –
27 fair relief in a prompt and efficient manner. Were the Court to deny final approval, the Class Members
28 would be left without a remedy as a practical matter and courts across the State would have to address
the issues presented here in a piecemeal, costly, and time-consuming manner. The settlement in this

case is therefore consistent with the “overriding public interest in settling and quieting litigation” that is “particularly true in class action suits.” *See Van Bronkhorst v. Safeco Corp.*, 529 F.2d at 950 (footnote omitted); *see also* 4 Newberg at § 11.41.

5. The Opinion of Experienced Counsel Favors Final Approval

Class Counsel supports the settlement as fair, reasonable and adequate, and in the best interest of the Class Members as a whole. (Choi Decl. at ¶ 5). Similarly, counsel for Defendant is also in favor of this settlement.

The endorsement of qualified and well-informed counsel of a settlement as fair, reasonable, and adequate is entitled to significant weight by the Court in its final approval determination. *See Officers for Justice*, 688 F.2d at 625; *Ellis*, 87 F.R.D. at 18; *Boyd*, 485 F.Supp. at 617; *Linney*, 151 F.3d at 1242.

6. Discovery, Mediation, and the Settlement Discussions Undertaken In This Action Favor Final Approval

Prior to negotiating the settlement, Class Counsel engaged in significant investigation on a number of topics and categories. Plaintiffs and Defendant engaged in written discovery, took the deposition of Defendant’s PMK, engaged in an extensive meet and confer process that resulted in Defendant producing all of the data necessary to allow Plaintiffs to ascertain and determine the potential amount of damages that Defendant possibly could be liable for if Plaintiffs prevailed at trial. (Choi Decl. at ¶ 2). Further, the Parties participated in a private mediation before Hon. Daniel J. Buckley, a highly experienced and highly regarded mediator with extensive mediation experience in employment matters, in particular wage and hour class actions. (*Id.* at ¶ 3).

As detailed above, each of the factors counsel strongly in favor of final approval of the Settlement by this Court.

IV. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT SHOULD BE APPROVED

Plaintiffs have requested, and Defendant does not oppose, an enhancement of Thirty Thousand Dollars (\$30,000.00), pursuant to the terms of the Settlement Agreement. Plaintiffs request that this Court approve such service payment in light of the efforts Plaintiffs put into this case, the absence of any objection to his service payment, and the excellent result achieved.

1 As shown in the supporting declarations, the Class Representatives spent significant time with
2 Class Counsel on a number of occasions to discuss the case, including providing substantive information
3 regarding Defendant's practices, and providing documents related to his own claims and the claims of
4 the Class. As part of their duties as Class Representatives, Plaintiffs provided invaluable information,
5 evidence, and documents that resulted in this settlement. (Declaration of Jared Deaver ¶¶6-7, and
6 Daniel Ramirez ¶¶11-16). Plaintiffs also provided a general release, including a waiver of Civil Code §
7 1542, which was not required of class members.

8 In addition to the invaluable services the Class Representatives provided, they also took a
9 significant risk, both professionally and monetarily, in acting as the Class Representatives. Because the
10 claims alleged by Plaintiffs involved the payment of costs to the prevailing party, Plaintiffs could have
11 possibly faced paying the costs of Defendant had Plaintiffs not prevailed in this action. Moreover, given
12 that future employers are much less likely to hire individuals who have filed suit against their prior
13 employer, particularly cases of this nature, Plaintiffs could face negative employment prospects in the
14 future. The Class Representative assumed such risks and the whole class benefited from this. Class
15 Members did not have to file individual lawsuits and bear the risks of payment of costs if they did not
16 prevail, nor did they have to face the potential for retaliation and not getting future employment had they
17 filed a lawsuit which is a public record. These are significant benefits, even apart from the time the
18 Class Representatives had spent working on this case, that weigh in favor of granting the requested
19 enhancement.
20

21 Courts have routinely granted approval of settlements containing such enhancements. In *League*
22 *of Martin v. City of Milwaukee*, 588 F. Supp. 1004 (E. D. Wis. 1984), the court held that the proposal
23 settlement properly granted the named plaintiffs individual relief. It is "not uncommon for Class
24 Members...to receive special relief in settlement... [The Plaintiff]...had been instrument in prosecuting
25 this lawsuit since the date it was filed." *Id.* at 1024. In *Kyriazi v. Western Elec. Co.*, 527 F. Supp. 18
26 (D. N. J. 1981), a named plaintiff in a Title VII class action was awarded individual relief of back-pay
27 and interest, reinstatement, punitive damages and counsel fees. Similarly, in *Women's Committee for*
28 *Equal Employment Opportunity v. NBC*, 76 F.R.D. 173 (SDNY 1977), the court approved as fair a
settlement that included awards to 16 named plaintiffs of virtually all the damages they sought.

1 In *Lo Re v. Chase Manhattan Corp.*, 1979 U. S. Dist. LEXIS 12210, 19 FEP Cas. (BNA) 1366
2 (SDNY 1979), the court approved a class representative payment of \$229,000 out of a \$1,579,000
3 settlement fund to the named plaintiff for his individual claims. One of the factors considered by the
4 court in determining that such payments were fair was the fact that none of the absent Class Members
5 objected to the enhancements. The court held that this fact showed that the Class Members were not
6 offended by these enhancements. *Id.* at 17. In the present case, there are no objections filed by any
7 individual to the requested amounts. As such, one can infer that none of the Class Members have any
8 disagreement with such individual enhancement. Furthermore, and as explained above, the Class
9 Representative took substantial risk in bringing the current benefits to the class.

10 Here, this litigation has resulted in a significantly valuable benefit to the class, and the Class
11 Representatives took on substantial risk in helping to get this financial benefit to the class. As such, the
12 enhancement should be awarded to the named Plaintiffs for their commitment, dedication, and risks
13 taken for this litigation. Accordingly, Plaintiffs respectfully request that the Court find the enhancement
14 as fair and reasonable.

15 **V. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED**

16 Class Counsel has achieved an excellent settlement in this litigation, as set forth in the Settlement
17 Agreement and this Motion. The proposed settlement provides substantial benefits to the Class and was
18 reached after adequate investigation and litigation by Class Counsel. Class Counsel and Plaintiffs
19 achieved a \$5,093,537.50 Gross Settlement Amount for the benefit of the Class to compensate the Class
20 for the claims alleged. There have been no objections filed against the Settlement or to Class Counsel's
21 request for attorneys' fees in the amount of \$1,782,738.13. As more fully detailed below, Class
22 Counsel's request for attorney's fees and reimbursement of costs, is fair, reasonable, and adequate.
23 Accordingly, final approval should be granted.

24 **A. An Award of Attorneys' Fees and Costs is Requested When A Common Fund Has**
25 **Been Created for the Benefit of the Class**

26 Class Counsel's application for an award of attorneys' fees in the amount of \$1,782,738.13 of the
27 \$5,093,537.50 Gross Settlement Amount created on behalf of the Class is reasonable and fair. The
28 requested fee represents fair compensation for undertaking complex, risky, expensive, and time-

1 consuming litigation on a contingent basis.

2 Class Counsel seeks a fee award calculated as 35% of the total value of the Settlement for the
3 successful prosecution and resolution of this action.

4 California state and federal courts routinely award fee awards of one-third of the settlement fund
5 in class actions. *Chavez v. Netflix, Inc.*, (2008) 162 Cal.App.4th 43, 66, fn. 11; *see also Wershba, supra*,
6 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method); *In re Pacific Enterprises*
7 *Securities Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33% fee award). Indeed, the California
8 Supreme Court approved the use of the “percentage of fund” method in California. *See Laffitte v. Robert*
9 *Half Int’l, Inc.*, (2016) 1 Cal.5th 480, 506 (“the percentage of fund method survives in California class
10 action cases...”). Specifically, the *Laffitte* Court held:

11 “We join the overwhelming majority of federal and state courts in holding that when class
12 action litigation establishes a monetary fund for the benefit of the class members, and the
13 trial court in its equitable powers awards class counsel a fee out of that fund, the court may
14 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
15 created. The recognized advantages of the percentage method—including relative ease of
16 calculation, alignment of incentives between counsel and the class, a better approximation
of market conditions in a contingency case, and the encouragement it provides counsel to
seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the
percentage method is a valuable tool that should not be denied our trial courts.”

17 *Id.* at 503 (internal citation omitted); *see also Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513,
18 516 (6th Cir. 1993) (holding that the percentage of the fund method more accurately reflects the results
19 achieved than the lodestar method and “establishes reasonable expectations on the part of Plaintiffs’
20 attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted
21 litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) (“The
22 percentage-of-recovery method is generally favored in common fund cases because it allows courts to
23 award fees from the fund in a manner that rewards counsel for success and penalizes it for failure.”).

24 Further, the Supreme Court in *Laffitte* stated that lodestar cross-checks are not required; in many
25 cases, performing a cross-check “undermines” one of the primary reasons for using the percentage
26 method: aligning counsel’s incentives with the benefits delivered to the class and discouraging
27 protracted litigation. *Id.* at 506 (finding trial courts “retain the discretion to forgo a lodestar cross-
28 check”); *Report of the Third Circuit Task Force, Court Awarded Attorney Fees* 108 F.R.D. 237, 258

1 (1985); *Lealao*, 82 Cal. App. 4th 19, 29–30 (citing the recommendations of the Third Circuit Task Force
2 with approval and observing that “[t]he criticisms of the lodestar approach set forth in this Report are
3 now echoed by many authorities, who have been most vocal about the manner in which it exacerbates
4 the problem of ‘cheap settlements’ and burdens already overworked trial judge.”).

5 Further, “the response of the class members to attorneys’ fee notice, though not decisive, is
6 relevant to the... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
7 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
8 market” for fees is well supported. *Id.* at p. 1269. In this case, the class notice specifically notified class
9 members that Plaintiff’s Counsel would be seeking thirty-five percent (35%) of the settlement fund as
10 attorneys’ fees. To date, a single class member has not objected to the settlement. This strong favorable
11 response also supports the requested fees.

12 In addition, it is recognized that one of the primary factors justifying an enhanced attorney’s fees
13 reward is the attendant risks inherent in the litigation. As observed in *City of Detroit v. Grinnell Corp.*,
14 495 F. 2d 448, 470 (2d Cir. 1974). No one expects a lawyer whose compensation is contingent upon his
15 success to charge, when successful, as little as he would charge a client who had agreed to pay for his
16 services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it
17 just to make a fee depend solely on the reasonable amount of time expended.

18 **B. Plaintiffs’ Counsel’s Lodestar Cross Check Supports the Award of Fees Requested**

19 The lodestar cross check also supports the award of the requested attorney’s fees in this matter.
20 Plaintiff’s Counsel’s lodestar is based on approximately 892 hours have been expended by Class
21 Counsel litigating this case. (Choi Decl. at ¶¶9-10; Lee Decl. ¶¶8-9, Saunders Decl ¶30; and Bibyian
22 Decl. ¶15).

23 The courts are quite liberal in the evidence required to prove an attorney’s hours. Detailed time
24 records are not required. An attorney’s testimony alone may suffice: “Testimony of an attorney as to the
25 number of hours worked on a particular case is sufficient evidence to support an award of attorney fees,
26 even in the absence of detailed time records.” *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

27 Reasonable hours include, in addition to time spent during litigation, the time spent before the
28 action is filed, including time spent interviewing the clients, investigating the facts and the law, and

1 preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 62 (1980). The fee
2 award should also include fees incurred to establish and defend the attorneys' fee claim. *Serrano v.*
3 *Unruh*, 32 Cal. 3d 621, 639 (1982). The hours for which Plaintiffs' Counsel seeks compensation involve
4 only these types of tasks. Thus, the number of hours for which fees are sought is reasonable.

5 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
6 experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000).
7 The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the attorney's skill
8 and experience, the nature of the work performed, the relevant area of expertise and the attorney's
9 customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App. 4th 629, 632-33 (1998).

10 Here, Class Counsel's requested hourly rate ranges from \$400 per hour to \$1,100 per hour. (Choi
11 Decl. at ¶ 7; Lee Decl. ¶11, Saunders Decl. ¶¶27-28; and Bibyian Decl. ¶15). Plaintiffs' Counsel's skill
12 and experience justify the requested rates. As shown in the supporting declarations, Plaintiffs' Counsel
13 has significant experience in the area of employment and wage and hour class and representative
14 actions. Plaintiffs' Counsel's practice focuses on representing employees in employment matters,
15 particularly wage and hour cases on a contingency basis. (Choi Decl. at ¶ 7; Lee Decl. ¶¶6-7, Saunders
16 Decl. ¶¶12-26; and Bibyian Decl. ¶¶3-13). As such, based on the hours and applicable rate, the lodestar
17 for Class Counsel through the finalization of this settlement will be approximately \$1,108,295, based on
18 892 total hours. (Choi Decl. at ¶ 9; Lee Decl. ¶10; Saunders Decl. ¶30; and Bibyian Decl. ¶15)

19 Based upon Plaintiffs' counsel's lodestar of \$1,108,295, the requested attorneys' fees result in a
20 1.61 multiplier, which is reasonable and well within the range of reasonable multipliers utilized by other
21 courts. Specifically, courts find reasonable multipliers in a lodestar cross-check can "range from 2 to 4
22 or even higher." *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also Sutter*
23 *Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a
24 cross-check in an antitrust class action); *Chavez*, 162 Cal. App. 4th at 60 (applying a 2.5 multiplier on a
25 lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78 (1988) (affirming a 2.34
26 multiplier without remand). The intermediate court in *Laffitte*, after finding that "2 to 4" is a reasonable
27
28

1 range for multipliers on a cross-check, affirmed a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at 881-82.³
2 Moreover, the Ninth Circuit has cited with approval a comprehensive study of fees awarded by the
3 percentage method showing that the majority of multipliers awarded are “in the 1.5-3.0” range. *See*
4 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (affirming a multiplier of 3.65 in an
5 employment class action case and analyzing the multiplier awarded in over 30 cases).⁴

6 Plaintiff’s counsel respectfully submit that said request is reasonable and fair, based on the
7 factors described above. Accordingly, the cross-check supports the fee requested.

8 **VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF** 9 **COSTS**

10 The request for reimbursement of costs, in the amount of \$33,805.62 is fair and reasonable.
11 Pursuant to the terms of the Settlement Agreement, Plaintiff are allowed to seek reimbursement of
12 litigation costs up to a maximum of \$80,000.00. To date, Class Counsel has expended a total of
13 \$33,805.62 in litigation related costs, which is less than the allocated amount. (Choi Decl. at ¶ 10, Ex.
14 B; Lee Decl. ¶12, Ex. B, Saunders Decl ¶32; and Bibyian Decl. ¶18). As such, this request should be
15 approved.

16 **VII. THE SETTLEMENT ADMINISTRATOR’S FEES AND COSTS SHOULD BE** 17 **APPROVED**

18 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement
19 Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement funds. As
20 shown on the Admin Decl., the class administration fees for the administration of the settlement in this
21

22
23 ³ The intermediate court opinion was affirmed in full by the California Supreme Court in its decision
24 guiding lower courts on assessing fees.

25 ⁴ Federal district courts applying California law have likewise routinely approved cross-check
26 multipliers between 2.0 and 3.0 in employment cases. *See, e.g., Willner v. Manpower Inc.*, 2015 WL
27 3863625, at *7 (N.D. Cal. June 22, 2015) (affirming a 2.10 multiplier on settlement of California Labor
28 Code violations); *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (approving
attorneys’ fees that resulted in lodestar multiplier of 2.83); *Hopkins v. Stryker Sales Corp.*, 2013 WL
496358, at *5 (N.D. Cal. Feb. 6, 2013) (approving a multiplier of 2.76 in settlement of Labor Code
violations). Other courts have found even higher multipliers to be reasonable by comparison to other
cases. *See Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, 1125-26 (C.D. Cal. 2008)
(approving a 5.2 multiplier after surveying a large body of cases affirming a higher multiplier).

1 matter amounts to Twenty-Two Thousand Dollars (\$22,000.00). (Admin Decl. at ¶16, Ex. C). For such
2 reasons, it is requested that the Settlement Administrator's fees be approved.

3 **VIII. PLAINTIFF HAVE PROVIDED NOTICE TO THE LWDA**

4 Concurrently with the filing of this Motion, Plaintiffs uploaded this motion and proposed order
5 to the LWDA's website. (Choi Decl. ¶11; Ex. C).

6 **IX. CONCLUSION**

7 For all the foregoing reasons, and on the basis of the authorities cited herein, Plaintiffs
8 respectfully submit that the standards for final approval have been met, and the terms of the Settlement
9 Agreement are fair, adequate and reasonable.

10 Accordingly, Plaintiffs respectfully request that the Court enter an Order in the form proposed
11 and submitted:

- 12 1. Granting final approval to the proposed Settlement Agreement;
- 13 2. Approving distribution of the settlement fund pursuant to the terms of the Settlement
- 14 Agreement;
- 15 3. Approving Plaintiff's request for award of the class representative enhancement with
- 16 payment pursuant to the terms of the Settlement Agreement;
- 17 4. Approving Plaintiff's request for an award of the Class Counsel's fees and costs with
- 18 payment pursuant to the terms of the Settlement Agreement;
- 19 5. Approving Plaintiff's request for payment of the settlement administration costs with
- 20 payment pursuant to the terms of the Settlement Agreement;
- 21 6. Setting a Compliance Hearing on or after May 1, 2026; and
- 22 7. Entering final judgment as to all members of the Settlement Class in this action.

23
24
25 DATED: June 4, 2025

LAW OFFICES OF CHOI & ASSOCIATES, P.C.

26
27 By: 
28 Edward W. Choi
Attorneys for Plaintiffs